

Chairperson

Bernard Frezza

Vice-Chairperson

Anthony Piloizzi

Secretary

Joseph Anzelone

Counsel for the Board

Joseph Ballirano, Esq.

**Building Official**

Bernard J. Nascenzi, C.B.O.

Zoning Board Members

Richard Fascia

Thomas Lopardo

Alternate Board Members

Dennis Cardillo

Albert Colannino

Recording Secretary

Holli Stott

JOHNSTON ZONING BOARD OF REVIEW

100 Irons Avenue, Johnston, Rhode Island 02919

Tel: 401-231-4000 ext 4068 Fax: 401-231-4181**MINUTES****March 27, 2014**

The Zoning Board of Review held its monthly meeting on the 27th day of March, 2014 at 6:30 p.m., at the Johnston Senior Center, 1291 Hartford Avenue, Johnston, RI. All persons interested in the following proposals had been requested to be present at this time.

Present: Bernard Frezza, Chairperson, Anthony Piloizzi, Vice-Chairman, Joseph Anzelone, Albert Colannino, Richard Fascia, Thomas Lopardo and Dennis Cardillo. Also present: Joseph Ballirano, Esq., Holli Stott, Recording Secretary, Bernard Nascenzi, Zoning Official and Diane Edson, Stenographer.

Mr. Piloizzi made a motion to approve February's minutes. Mr. Anzelone seconded. A voice vote was taken; all in favor.

Mr. Piloizzi made a motion to recess as the Zoning Board of Review and convene as the Board of Appeals. Mr. Anzelone and Mr. Lopardo seconded. A voice vote was taken; all in favor.

A. File 2013-42 (Appeal from a decision from the Building Official pursuant to Art. XVIII Sect § 340-129)

LOCATION: 21 Beechnut Drive
 OWNER/ APPELLANT: Joseph Rossi
 LOT: AP 43 — Lot 298; R-40 Zone
 ISSUE: Appeal Notice of Violation dated January 21, 2014

Mr. William Conley, town solicitor, reminded the board about the extensive testimony and evidence regarding this particular appeal at a prior hearing. Mr. Conley explained to the board that there have been follow up inspections at the property by both the Building Official and Code Enforcement Officer and the property owner has engaged in significant compliance as to the code matters, but there are still a few details that need to be addressed so with that being said Mr. Conley would like to ask the board for a continuance until next month. Mr. Michael Pisaturo, attorney for the property owner Joseph Rossi, agreed with the continuance. Mayor Joseph Polisena, addressed the board with his concerns of the medical marijuana law, including being spread into the neighborhoods, which is a major concern of his and all the loop holes that this law entails. Mayor Polisena understands the medical marijuana treatment for those who suffer with extreme pain, but it is very difficult for the caregivers to be

monitored and he feels that it should not be in residential neighborhoods. In other communities have had situations with home invasions from mistaken identities. Mayor Polisena asked the zoning board to please watch carefully and pay close attention to the town's zoning rules. Mayor Polisena understands that it is tough for the police to arrest these "caregivers" once they show them their medical marijuana cards. Mr. Anzelone asked the Mayor how many plants one "caregiver" can have at a given time and the Mayor stated that they can have twelve. Mr. Cardillo asked the Mayor how many "caregivers" can reside at one address and the Mayor stated that he was not sure.

Mr. Pilozzi made a motion to continue Mr. Conley's request to continue this item until next month. Mr. Anzelone seconded. A voice vote was taken; all in favor.

Mrs. Carol Mastrangelo, abutter to the property, was sworn in and her concerns are with all the increased traffic at this location with her having her children and grandchildren and Mr. Frezza explained to her that these concerns will all be brought up at next month's meeting. Mr. Conley expressed that each and every abutter will be notified prior to next month's meeting and any and all concerns will be addressed at that time.

Mr. Pilozzi made a motion to recess as the Zoning Board of Appeals and convene as the Board of Review. Mr. Anzelone seconded. A voice vote was taken; all in favor.

B. File 2014-13

LOCATION: 2279 Plainfield Pike
OWNER APPLICANT: MPDP Realty, LLC
LOT: AP 32 — Lot 2; 1,742,400 sq. ft.; B-2 and R-40 Zone
EXISTING USE: Agricultural Use
PROPOSAL: Agricultural Use

Use Variance petitioned under Article III § 340-8 Table of Use Regulations sect 1.6

Mr. Michael Pezza, owner of the property, was sworn in and he explained to the board that he would like to build a 16' x 72' shade house over the front of his garage for his plant business. Mr. Pilozzi asked if there is going to be a cover to pull it down at night and Mr. Pezza explained that it will be open all the time. Mr. Nascenzi explained to the board that the reason why he is here before the board is because of the size of the structure.

No abutters for or against.

Mr. Pilozzi made a motion to grant. Mr. Anzelone seconded. A voice vote was taken; all in favor.

Mr. Pilozzi made a motion to recess as the Zoning Board of Review and convene as the Board of Appeals. Mr. Anzelone seconded. A voice vote was taken; all in favor.

C. File 2014-14 (Appeal from a decision from the Building Official pursuant to Art. XVIII Sect § 340-129)

LOCATION: 396 Greenville Ave
OWNER: Michael and Mary DiMeo
APPELLANT: Elisabeth Bux
LOT: AP 47 — Lot 186; R-20 Zone
ISSUE: As grounds for the appeal, the undersigned contends that the Town of Johnston Planning Board made a prejudicial procedure error, clear error and lack of support by the weight of the evidence in the record by failing to make positive findings on

the record at the hearing of the general purposes set forth in R.I.G.L. 45-23-30 and the standard provisions set forth in R.I.G.L. 45-23-60.

Mr. Matt Stone was sworn in and he explained to the board that his partner Elisabeth Bux owns the property at 378 Greenville Avenue that abuts the proposed project location. Mr. Stone explained to the board that he believes that the master plan decision should be over turned and that a development should not be allowed on this piece of land.

Mr. Andrew Keagan, attorney for the abutter, was sworn in and he explained to the board that he had prepared a brief that he would like the board to accept as exhibit A and read immediately for this hearing. Mr. Pilozzi explained tot Mr. Keagan that the board should have had it earlier to review. Mr. Frezza stated that the board has a long agenda and a 10:30 curfew and that the board is not going to read it. Mr. Ballirano explained that it's unacceptable to bring a brief the night of the hearing and expect the board to incorporate it into their decision.

Mr. Pilozzi made a motion not to accept the brief. Mr. Anzelone seconded. A voice vote was taken; all in favor.

Mr. Keagan explained to the board that in November 2013 C.F. Investments and M.T.M development proposed a master land development master plan for this property with a sewer line for the development that would run through a paper street, a so called right of way, and when these paper streets were created in the form of easements they provided a 30 foot right of way, 15 feet on each property for highway purposes and a sewer line is not a highway purpose. In January the Planning Board held their monthly meeting and approved the proposed subdivision subject to four conditions.

- The merger of two lots within the subdivision
- The granting of conservation and drainage easements
- Creation of a 25 foot buffer strip
- Opinion from the legal department/town engineer to review and concur that the paper street designated on sheet 1 of 2 of the Master Plan is privately owned and that the sewer emergency easements are not required through plat 47 lots 43, 44, 45 and 46 in which 3 of those lots are owned by his client.

Mr. Stone explained that four individuals have rights to this easement and that it is strictly for highway purposes only and not for a sewer line.

Mr. Shekarchi objected on two grounds. First as Mr. Ballirano stated prior the board is sitting as the board of appeals and not the zoning board of review and that they are not going to allow any new evidence being submitted to the board and second the condition for the project to continue to the preliminary stage and if this project is successful tonight and before the Town Council can then continue and each and every concern will be addressed at that hearing not this one before us tonight.

Mr. Keagan stated that the planning board's decision is defective because of the condition that was given is not the type of condition that the statue contemplates when it talks about conditions according to the Rhode Island General Law.

Mr. Shekarchi disagreed with Mr. Keagan stating that the plans were available for anyone to review prior to the meeting for weeks and it was reviewed time and time again by the post town planner Pam Sherrill and Building Official Ben Nascenzi. Also, Mr. Keagan's remedy would be to go to Superior Court not the Zoning Board of Appeals.

Mr. Ballirano explained that the town does not get involved in private easement disputes. Each party involved should come to an agreement.

Mr. Keagan asked the board if they will accept additional documentation and continue this item until next month's hearing. Mr. Ballirano stated that is not their procedure. Mr. Shekarchi explained that when you file an appeal state law puts an automatic stay but Ms. Manzi corrected him stating that they asked for a continuance for the Town Council and not because an appeal was filed. Mr. Ballirano explained that the appellant's attorneys have failed to prepare for this hearing and they will give them a fair hearing.

Mr. Keagan completed by stating the planning decision dated February 14, 2014 was divided into two parts. The first part is the findings of fact which according to Mr. Keagan there are none. Mr. Ballirano asked Mr. Keagan if he had read the transcript from the planning board meeting that night and he stated that he did not. Mr. Ballirano then continued by explaining that the decision is a condensed decision based on 100 pages of facts heard.

Mr. Fascia addressed the chair that he would like to abstain from the vote considering he joined the meeting a few minutes late.

Mr. Pilozzi made a motion to uphold the building official's decision based on the finding of facts on the following:

- The complaint against the Planning Board decision, its procedural error clear error lack of support by the weight of evidence record by failing to make positive findings on the record at the hearing set forth by standards R.I.G.L. 45-23-606789 I find nothing in tonight's testimony to go against that. Their findings of fact, the Planning Board's findings of fact clearly demonstrate that they have all expert testimony. I can't see throwing expert testimony aside on assumptions. Their finding of fact complies 4, 5 pages here and it's all witnessed by experts. So I'm going to base my motion to uphold our Building Official, I believe no prejudicial procedural errors were made by the Planning Board in issuing their decision posed filed on 11/27 and finding of fact on January 7, 2014, after they completed their review.

Mr. Cardillo seconded the motion; A voice vote was taken; All in favor.

Mr. Pilozzi made a motion to recess as the Zoning Board of Appeals and convene as the Board of Review. Mr. Fascia seconded. A voice vote was taken; all in favor.

D. File 2014-06

LOCATION: West Side Drive
OWNER/ APPLICANT: Joseph M Driscoll Trust
LOT: AP 46 — Lot 194; 26,264 sq. ft.; R-40 Zone
EXISTING USE: Vacant Lot
PROPOSAL: Single Family Dwelling

Dimensional Variance petitioned under § 340-9 Table of Dimensional Regulations

	DIMENSION	MINIMUM REQUIRED	PROPOSED	RELIEF REQUESTED
SETBACKS:	LOT SIZE	40,000sq ft.	28,148sq ft.	18,852sq ft.
	LOT FRONTAGE	140'	0'	140'

		LOT WIDTH	140'	134'	6'
--	--	------------------	-------------	-------------	-----------

Mr. Joseph Driscoll, applicant, was sworn in and he explained to the board that he would like to build a single family home on this lot. Mr. Driscoll complied with all previous stipulations pertaining to this lot. Any applications on this lot from the past are mute now and this application will be treated as a new application.

Mr. Ballirano asked Mr. Driscoll if he had any experts with him here tonight and Mr. Driscoll was under the impression that there was not going to be any testimony considering he did all the tasks that the Town has asked of him. Mr. Driscoll explained that he obtained the land through a foreclosure. Mr. Nascenzi explained that his engineer has been in our office many times giving us various items that he requested and that this application will be treated as a new application and all the testimony from previous hearings are null and void because this application is brand new. Mr. Driscoll did not realize that he needed experts to give a better testimony in front of the board.

Ms. Gina Bianco, abutter to the property, was sworn in and she explained to the board that her parents have lived there for over forty years and all of the residents in that area have also been there for numerous years. Ms. Bianco stated that this a landlocked piece of property with zero frontage and that Mr. Driscoll since he has been in the business for a long time he should of known what he was purchasing. Ms. Bianco went over all the deeds that went back and forth between Mr. Driscoll and the previous owner Mr. Demelo who previously owned the lot. Mr. Driscoll stated that he owns the right of way which is twenty feet long and that it's in the current deed.

Mr. Piloizzi made a motion to deny based on the following: He is not in compliance with Section 340, ordinance 941. He's not in conformance with any of our zoning requirements at that location. The burden of proof is on the landowner to show this Board why he should be given the variances he's requesting. Mr. Fascia seconded. A voice vote was taken; all in favor.

E. File 2014-07

LOCATION: 123 King Philip Street
 OWNER: Richard Licht and Joseph Deangelis Trustees
 APPLICANT: Anthony Rosciti Jr.
 LOT: AP 13 — Lot 481; 8,842 sq. ft.; I Zone
 EXISTING USE: Garage/Office
 PROPOSAL: Auto Sales

Use Variance petitioned under Article III § 340-8 Table of Use Regulations sect 10.11

Mr. Alfred Russo, attorney for the applicant, explained to the board that Mr. Rosciti has had an auto sales in the name of N.M.S. auto sales Inc. for the past 34 years. Mr. Rosciti explained to the board that half the property is in Providence, which he already has a business license, and the other half in Johnston and he would like to obtain a license from the Town, dealers' commission already approved it. Mr. Rosciti would like to move the cars onto the other side of his building in which there is enough asphalt to do so. No changes to the structure that is currently there. Mr. Russo handed the board pictures of where the cars will be parked if approved.

Mr. Piloizzi made a motion to accept the photos as exhibit A. Mr. Anzelone seconded. A voice vote was taken; all in favor.

Mr. Piloizzi questioned Mr. Russo why his client is seeking to get a Use Variance versus a Special Use Permit and Mr. Nascenzi explained that because it's in an industrial zone and it's not permitted there so a use variance if its permitted there with restrictions.

No abutters for or against the project.

Mr. Piloizzi made a motion to approve. Mr. Anzelone seconded. A voice vote was taken; all in favor.

Mr. Frezza made a motion to recess. Mr. Piloizzi seconded. A voice vote was taken; all in favor.

Recess 7:58 p.m.

Reconvene 8:07 p.m.

Mr. Fascia made a motion to reconvene. Mr. Piloizzi seconded. A voice vote was taken; all in favor.

F. File 2014-09

LOCATION: Simmonsville Avenue

OWNER/ APPLICANT: Alfred Russo and Vincent Russo

LOT: AP 29 — Lot 71; 27,352 sq. ft.; R-20 Zone

EXISTING USE: Garage

PROPOSAL: Rebuild wood frame garage with metal frame garage

Dimensional Variance petitioned under Article XI § 340-70 Destruction or demolition of nonconforming use

	DIMENSION	MINIMUM REQUIRED	PROPOSED	RELIEF REQUESTED
SETBACKS:	LOT FRONTAGE	120'	78.59'	41.41'
	LOT WIDTH	120'	100'	20'
	BUILDING HEIGHT ACCESSORY STR.	15'	19'	4'
	RIGHT SIDE YARD	25'	20'	5'

Mr. Russo, attorney for the project and co-owner of the lot, explained to the board that they would like to rebuild a garage that caught fire two months ago. The previous garage was build out of wood and the new garage will be metal and slightly bigger because equipment over the years have gotten bigger so they will need more space.

Mr. Veltri, land surveyor on the project, was sworn in and he explained to the board that the trucks with the heavy machinery. Mr. Veltri also went over the parking, energy efficiency and that the garage will only have electricity.

No abutters for or against the project.

Mr. Piloizzi made a motion to approve. Mr. Anzelone and Mr. Lopardo seconded. A voice vote was taken; all in favor.

G. File 2014-11

LOCATION: 27 Hillside Avenue
 OWNER/ APPLICANT: Michael Gorkin
 LOT: AP 14 — Lot 273; 10,233sq. ft.; R-15 Zone
 EXISTING USE: Single Family Dwelling
 PROPOSAL: Pitching roof and three wall addition to create mudroom

Dimensional Variance petitioned under Article III § 340-9 Table of Dimensional Regulations

	DIMENSION	MINIMUM REQUIRED	PROPOSED	RELIEF REQUESTED
SETBACKS:	LOT SIZE	15,000sq ft.	10,233sq ft.	4,777sq ft.
	LOT FRONTAGE	100'	70'	30'
	LOT WIDTH.	100'	70'	30'

Mr. Michael Gorkin, owner of the property, was worn in and he explained to the board that he is keeping the footprint of the house he is just repitching the roof so that there is more headroom on the second floor and build a mudroom on the concrete entrance. Mr. Gorkin will be occupying this residence with his daughter and grandchild, but he will not be increasing the bedrooms. He will not be turning this home into a two family.

No abutters for or against

Mr. Anzelone made a motion to grant. Mr. Fascia seconded. A voice vote was taken; all in favor.

E. File 2014-12

LOCATION: 775 Hartford Avenue
 OWNER APPLICANT: Kenneth Beck and Brian Beck
 LOT: AP 12 — Lot 86; 123,109 sq. ft.; B-2 Zone
 EXISTING USE: Manufacturing
 PROPOSAL: Manufacturing

Special Use Permit petitioned under Article III § 340-9 Table of Use Regulations sect 11.2

Mr. Kenneth Beck, applicant, was worn in and he explained to the board that he is looking to obtain a Special Use Permit for a manufacturing shop. This shop produces countertops and kitchen cabinets.

No abutters for or against.

Mr. Pilozzi made a motion to grant. Mr. Anzelone seconded. A voice vote was taken; all in favor.

Mr. Pilozzi made a motion to recess as the Zoning Board of Review and convene as the Board of Appeals. Mr. Anzelone seconded. A voice vote was taken; all in favor.

LOCATION: 120 Scituate Avenue
 OWNER/ APPELLANT: Anthony Fuoco
 LOT: AP 25 — Lot 274; R-20 Zone
 ISSUE: Appeal Notice of Violation dated November 21, 2013

Mr. Cardillo said to the board that he would like to recuse himself due to the fact he was the abutter that filed the original complaint.

Mr. Acciardo, attorney for the appellant, was sworn in and he explained to the board that the appellant was cited for not having a building permit, unauthorized departures and regulations regarding parking. The parking violations were issued out of municipal court and will be heard on May 14, 2014. The other issue was when the applicant had a single lot which was subdivided into two separate lots which made the garage being placed on the new lot and no building permits were issued for the garage on the new lot. Mr. Nascenti explained to the board that Mr. Acciardo is correct and at the time of the violation notice the subdivision was not recorded until additional research was completed. Property lines were moved not the building itself. Once everything was researched and clarified the violations were removed and the owners were in compliance.

Mr. Dennis Cardillo, abutter to the property, was sworn in and he explained to the board that A and K Construction has been cited for storage of heavy equipment on the residential property at 120 Scituate Avenue. Mr. Cardillo explained that the owners should buy or lease a property that is zoned for their suitable use. Mr. Cardillo submitted a copy of the appellant's license that states this business is and should be running out of 298 Simmonsville Ave and not Scituate Ave.

Mr. Pilozzi made a motion to accept as exhibit A. Mr. Anzelone seconded. A voice vote was taken; all in favor.

Mr. Acciardo objected to the submission of these documents to the board because they are here for a building violation hearing not a business license. Mr. Ballirano explained that basically the matter has been resolved and he will not be accepting any documents into the record. Mr. Acciardo understands that the building violations are lifted and the parking and zoning are still pending via their court date of May 14, 2014 and that they might have to revisit the zoning board for further approvals if needed.

Mr. Anzelone made a motion to remove the violation. Mr. Pilozzi seconded. A voice vote was taken; all in favor.

Mr. Pilozzi made a motion to adjourn as the Zoning Board of Review and the Board of Appeals. A voice vote was taken; all in favor.

Adjourn 8:42 p.m.